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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re GIA B., a Person Coming Under
the Juvenile Court Law.**

**ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,**

Plaintiff and Respondent,

v.

JENNIFER P.,

Objector and Appellant.

A105834

**(Alameda County
Super. Ct. No. J188829)**

Jennifer P. appeals from the dispositional order removing her child from her custody under a reunification plan. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Gia was born in November 2003 to appellant Jennifer P. (Mother) and Justin B., who was incarcerated at the California Youth Authority at the time of these proceedings.¹ Mother had a history of mental illness and homelessness. She had exhibited angry,

¹ During the proceedings, Justin B. was determined to be the father of the minor. He is not a party to this appeal.

violent behavior toward others, resulting in several previous arrests and incarcerations. The child was placed in an emergency foster home two days after she was born.

Dependency proceedings began November 26, 2003 with the filing of the petition which alleged a failure to protect the child (Welf. & Inst. Code, § 300, subd. (b))²; the petition further alleged that there was a substantial risk that the child would suffer serious physical harm or illness by the inability of the mother to provide regular care due to her mental illness, developmental disability, or substance abuse. In addition, the petition alleged that the child was left without any provision for support in that the ability of the mother to provide adequate care for the minor was unknown.³ (§ 300, subd. (g).)

In the detention report dated December 1, 2003, Social Services noted that Mother had been diagnosed with bipolar disorder at the age of 15 and hospitalized in Texas on two occasions. Since her arrival in the Bay Area, she had been placed under section 5150 holds at least six times. Mother refuses to acknowledge that she suffers any mental illness. Although mental health care providers have prescribed Lithium, once she improves, she takes herself off the medication. Mother admitted regular unprescribed marijuana use for medicinal purposes throughout her pregnancy. She has one other child, a six-year-old daughter, who resides with her father by voluntary agreement. She has not seen her elder daughter for a couple of years. From July to September 2003, while pregnant, Mother was incarcerated for battery. Her criminal record includes convictions for battery (Pen. Code, § 242), gassing a peace officer (Pen. Code, § 243.9, subd. (a)), and violation of a stay-away order (Pen. Code, § 166, subd. (a)(4)).

The maternal grandmother confirmed that Mother had been diagnosed as suffering from bipolar schizoaffective disorder and reported to the social worker that Mother did

² All further references to statutes are to the Welfare and Institutions Code unless otherwise indicated.

³ The facts are taken from the petition to which Mother stipulated.

well on medication but once she felt better, she gradually stopped taking it. The maternal grandmother expressed concern about the safety of the minor if released to the mother at the time of the proceedings. Mother refused the option of placing the minor with either the maternal or paternal grandmother. On December 1, 2003, the minor was detained.

Mother was cooperative with social workers; she agreed to a psychological evaluation, which was not complete at the time of the dispositional hearing. She consistently visited the minor for two hours one day a week. The social worker reported that Mother's interaction with the minor was appropriate. These visits were supervised.

At the combined jurisdiction/disposition hearing in January 2004, the agency submitted an addendum to its first report, providing new information brought to the attention of the agency by the maternal and paternal grandmothers. Attached were flyers, hand printed by Mother and apparently posted by her around Berkeley.⁴ The court appropriately expressed grave concern about the content of Mother's writings.

The juvenile court concluded Gia should not be returned to Mother's care, finding that the child would suffer serious physical harm or illness by virtue of the mother's inability to provide regular care for the child due to her mental illness and history of unstable housing. Mother was incarcerated from July to September for battery, then she was living at the father's stepfather's home, then on the street at the UC Berkeley campus, and at the time of the hearing, she was living at a homeless shelter open only until March 2004. The court found the mother's current and future housing arrangements for herself and the minor "tenuous, uncertain, and not stable."

⁴ The flyers, attached to the January 6, 2004 addendum report, include "Statements on the Damaging Effects of All You Ravers, Party Groups, Labels, etc. Not Paying What They Owe Me Yet" which was written when Mother was eight months pregnant; "To Any Student, especially Asians and Europeans who have ever lied and said they are higher class than Jennifer 'Jenna'" and "The Only Formula to Create a Child So Unwanted It Could Be Called Anti-Christ."

The court further found that due to Mother's mental illness, Mother has a history of volatile behavior resulting in her becoming angry and assaultive. Her belief that people owe her money causes disagreements that result in section 5150 holds. The court reviewed the addendum report of January 12, 2004, including the exhibits which "seem to demonstrate a state of mind by the mother that is delusional and a symptom or manifestation of the gravity of her mental illness." Altogether, these findings demonstrate that the minor would be at substantial risk of harm.

The court ordered that the minor be placed with a licensed emergency foster parent. Services were ordered for both Mother and the father.

DISCUSSION

When, as here, the juvenile court decides to remove a child from parental custody at the dispositional hearing, the juvenile court must first find by clear and convincing evidence that "[t]here is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody." (Welf. & Inst. Code, § 361, subd. (c)(1).) Appellant challenges the juvenile court's factual findings.

As appellant recognizes, the heightened burden of proof at the dispositional hearing is intended to protect the fundamental right of a parent to retain custody of a child. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1656.) On appeal, however, the substantial evidence rule applies. (*Id.* at p. 1654.) We review the record in the light most favorable to the juvenile court's determinations and draw all reasonable inferences from the evidence to support the court's findings and orders. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

A removal order is proper if it is based on proof of parental inability to provide proper care for the child and potential detriment to the child if she remains with the parent. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60.) “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 749, fn. 6.) The court may consider a parent’s past conduct as well as present circumstances. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 900.)

Mother argues that at the time of the hearing, she had temporary housing in a shelter and, although admittedly suffering from “some problems,” there was no expert opinion evidence that her psychological problems would affect the well-being of the child. Mother was cooperating in a psychological evaluation, but at the time of the hearing the report was not completed. She argued that without expert opinion providing a nexus between her mental health and the safety of the child, the agency had failed to meet its burden. The agency’s “grave concern” was not sufficient. We disagree.

Here, there is substantial evidence from Mother’s past conduct and her circumstances at the time of the hearing to support the trial court findings. “[T]he mother’s current and future housing arrangements for herself and the minor are tenuous, uncertain, and not stable, creating a substantial risk that the infant minor, who is not yet two months old, will suffer serious physical harm or illness.” Mother testified that she was currently living in a shelter that would close in March. Her plan was to first attempt to move back to Oakland where she had lived previously, and if that did not work, she planned to try to find housing with assistance from Cal-Works. The indefiniteness of Mother’s housing plans echoed the instability of her living arrangements before Gia’s birth. Before moving into the shelter where she was during the hearings, she lived temporarily with the stepfather of the minor’s father. Before that housing, she had been incarcerated for three months during her pregnancy for assault and battery, and before

that conviction, she was living on the streets. This recent history of instability aggravates Mother's lack of future planning for housing and provides substantial evidence for the trial court's finding.

The sum of the evidence before the trial court provided ample support for its findings. The evidence supports the conclusion that the mother's emotional instability, substance abuse, and combative behavior presented a substantial risk of danger to her daughter within the meaning of section 361, subdivision (b)(1). (*In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1654.)

We acknowledge, as did the trial court, that Mother has cooperated with the agency, voluntarily undergone psychological evaluation, and consistently visited with her daughter in an appropriate manner under supervision. Nevertheless, evidence of Mother's mental illness including involuntary hospitalizations, her failure to acknowledge her condition and her refusal to continue medications, her assaultive behavior, criminal convictions, violation of stay-away orders, and delusional writings support the court's findings.

Mother will have the opportunity at each review hearing to argue the benefit of any favorable psychological evaluation. "Evaluations are generally ordered as part of a reunification plan after the child is declared a dependent. [Citations.] . . . where the child is declared a dependent because of parental mental illness, the parent may subsequently be evaluated to determine if the parent is incapable of utilizing reunification services." (*Laurie S. v. Superior Court* (1994) 26 Cal.App.4th 195, 201.)

DISPOSITION

The dispositional order is affirmed.

GEMELLO, J.

We concur.

STEVENS, Acting P. J.

SIMONS, J.